NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING November 3, 2014

RULE CHAPTER 1. DEFINITIONS

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Colorado Department of Regulatory Agencies and the Division of Real Estate to promulgate rules, or to amend, repeal or repeal and re-enact the present rules related to conservation easements.

STATEMENT OF BASIS

The statutory basis for the rules titled <u>Conservation Easements</u> is Chapter 7 of Title 12, Article 61, Colorado Revised Statutes, as amended.

STATEMENT OF PURPOSE

The purpose of this rule is to effectuate the legislative directive to promulgate necessary and appropriate rules in conformity with the Colorado Revised Statute.

SPECIFIC PURPOSE OF THIS RULEMAKING

The specific purpose of this rule is to define key terms pertaining to the conservation easement program pursuant to sections 12-61-720, 12-61-722 and 12-61-723, C.R.S.

Proposed New, Amended and Repealed Rules

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CHAPTER 1: DEFINITIONS

- 1.1. ASSIGNMENT OF A TAX CREDIT CERTIFICATE: OCCURS WHEN THE TAX CREDIT CERTIFICATE APPLICATION PURSUANT TO SECTION 12-61-723, C.R.S. IS DEEMED COMPLETE AND THE REQUESTED DOLLAR AMOUNT FROM THE APPLICATION IS ENCUMBERED AND CREDITED FROM THE TAX CREDIT CAP.
- 1.2. AUTHORIZED REPRESENTATIVE: THE LANDOWNER'S DESIGNEE WHO IS DESIGNATED IN WRITING BY THE LANDOWNER ON THE APPLICATIONS PRESCRIBED BY THE DIVISION. AN AUTHORIZED REPRESENTATIVE MAY CONDUCT THE FOLLOWING ACTIVITIES ON THE LANDOWNER'S BEHALF, INCLUDING, BUT NOT LIMITED TO:

- ANSWERING QUESTIONS CONCERNING THE APPLICATION, CONDUCTING SETTLEMENT DISCUSSIONS, AND PREPARING AND SUBMITTING A WRITTEN APPEAL.
- 1.3. CO-HOLD: TWO OR MORE NONPROFIT OR GOVERNMENT ENTITIES ARE NAMED GRANTEES OF THE CONSERVATION EASEMENT AND BOTH ENTITIES HOLD THE EASEMENT FOR THE PURPOSES OF IMPLEMENTING RULE 2.6.
- 1.4. COMMISSION: THE CONSERVATION EASEMENT OVERSIGHT COMMISSION CREATED BY SECTION 12-61-721, C.R.S.
- 1.5. CONSERVATION EASEMENTS: CONSERVATION EASEMENTS THAT HAVE A CHARITABLE DONATION COMPONENT. THIS INCLUDES FULL DONATIONS AND BARGAIN SALE CONSERVATION EASEMENTS.
- DAYS: CALENDAR DAYS FOR THE PURPOSES OF IMPLEMENTING SECTION 12-61-723, C.R.S.
- 1.7. DEEMED COMPLETE: THE APPLICATION PURSUANT TO SECTION 12-61-723, C.R.S. IS DATE STAMPED BY THE DIVISION AND INCLUDES, AT A MINIMUM, THE FINAL APPRAISAL, THE RECORDED CONSERVATION EASEMENT DEED, BASELINE DOCUMENT REPORT AND PRESCRIBED NONREFUNDABLE FEE.
- 1.8. DIRECTOR: THE DIRECTOR OF THE DIVISION OF REAL ESTATE WITHIN THE DEPARTMENT OF REGULATORY AGENCIES.
- DIVISION: THE DIVISION OF REAL ESTATE WITHIN THE DEPARTMENT OF REGULATORY AGENCIES.
- 1.10. EXAMINATION: THE REVIEW CONDUCTED BY THE DIVISION AND PREPARATION OF A REPORT TO BE PRESENTED TO THE DIRECTOR AND COMMISSION FOR THE PURPOSES OF IMPLEMENTING SECTION 12-61-723, C.R.S.
- 1.11. FINAL DETERMINATION: THE FINAL DECISION BY THE DIRECTOR AND/OR THE COMMISSION TO APPROVE OR DENY A TAX CREDIT CERTIFICATE APPLICATION PURSUANT TO SECTION 12-61-723, C.R.S.
- 1.12. ISSUANCE OF A TAX CREDIT CERTIFICATE: OCCURS AFTER THE DIRECTOR AND THE COMMISSION HAVE MADE THE FINAL DETERMINATION TO APPROVE THE APPLICATION PURSUANT TO SECTION 12-61-723, C.R.S. THE TAX CREDIT CERTIFICATE FOR THE ASSIGNED AMOUNT IS MAILED TO THE LANDOWNER.
- 1.13. PETITIONER: ANY PERSON WHO HAS BEEN GRANTED LEAVE TO INTERVENE BY EITHER THE DIRECTOR OR COMMISSION FOR THE PURPOSES OF IMPLEMENTING THE PROVISIONS OF CHAPTER 5 OF THESE RULES.
- 1.14. SAFE AND SECURE MANNER: REASONABLE MEASURES ARE TAKEN TO MINIMIZE THE RISK OF LOSS, DAMAGE, OR THEFT.
- 1.15. SETTLEMENT: FOR THE PURPOSES OF IMPLEMENTING SECTION 12-61-723, C.R.S., AN OFFICIAL AGREEMENT INTENDED TO COMPROMISE ON ANY DEFICIENCIES IDENTIFIED IN THE APPLICATION AND ANY SUPPORTING DOCUMENTATION, INCLUDING THE DOLLAR AMOUNT OF THE TAX CREDIT CERTIFICATE TO BE ISSUED BY THE DIVISION.
- 1.16. TAX CREDIT CAP: THE TOTAL DOLLAR AMOUNT OF TAX CREDITS AVAILABLE FOR A GIVEN YEAR AS DEFINED IN SECTION 39-22-522, C.R.S.

A hearing on the above subject matter will be held on Monday, November 3, 2014, at the Colorado Division of Real Estate, 1560 Broadway, Suite 1250-C, Denver, Colorado 80202 beginning at 9:00 a.m.

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered.

NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING November 3, 2014

RULE CHAPTER 2. CERTIFICATION OF CONSERVATION EASEMENT HOLDERS

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Colorado Department of Regulatory Agencies and the Division of Real Estate to promulgate rules, or to amend, repeal or repeal and re-enact the present rules related to conservation easements.

STATEMENT OF BASIS

The statutory basis for the rules titled <u>Conservation Easements</u> is Chapter 7 of Title 12, Article 61, Colorado Revised Statutes, as amended.

STATEMENT OF PURPOSE

The purpose of this rule is to effectuate the legislative directive to promulgate necessary and appropriate rules in conformity with section 12-61-720, C.R.S.

SPECIFIC PURPOSE OF THIS RULEMAKING

The specific purpose of this rule is to establish and implement the requirements necessary for the certification and discipline of qualified organizations that hold conservation easements for which a tax credit is claimed.

Proposed New, Amended and Repealed Rules

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CHAPTER 2: CERTIFICATION OF CONSERVATION EASEMENT HOLDERS

- 2.1. QUALIFICATIONS FOR CERTIFICATION TO HOLD CONSERVATION EASEMENTS
 THE DIVISION MAY DENY, REFUSE TO RENEW, OR REVOKE THE CERTIFICATION OF A
 CONSERVATION EASEMENT HOLDER WHO FAILS TO MEET ANY OF THE FOLLOWING
 MINIMUM QUALIFICATIONS:
 - A. ORGANIZATION THE CONSERVATION EASEMENT HOLDER:
 - 1. MEETS THE REQUIREMENTS OF A QUALIFIED ORGANIZATION UNDER SECTION 12-61-720 C.R.S. AND THE QUALIFICATIONS IN SECTION 38-30.5-104(2), C.R.S.,

TO HOLD A CONSERVATION EASEMENT FOR WHICH A STATE TAX CREDIT MAY BE CLAIMED:

- 2. HAS THE CAPACITY, INCLUDING, BUT NOT LIMITED TO, A SUFFICIENT NUMBER OF BOARD MEMBERS, STAFF, AND/OR VOLUNTEERS, TO ACCOMPLISH THE WORK OF THE ORGANIZATION:
- 3. HAS A SUFFICIENT NUMBER OF BOARD MEETINGS PER YEAR TO ACCOMPLISH THE WORK OF THE ORGANIZATION; AND
- 4. IF A NON-GOVERNMENTAL ENTITY, THE ORGANIZATION IS IN GOOD STANDING WITH THE COLORADO SECRETARY OF STATE.
- B. PROCESS: CONSERVATION EASEMENT SELECTION, REVIEW AND APPROVAL
 - THE CONSERVATION EASEMENT HOLDER HAS AND FOLLOWS REASONABLE POLICIES AND PROCEDURES FOR SELECTING CONSERVATION EASEMENTS. THESE INCLUDE, BUT ARE NOT LIMITED TO:
 - a. ESTABLISHING AND FOLLOWING SELECTION CRITERIA TO IDENTIFY CONSERVATION EASEMENTS WITH A CONSERVATION PURPOSE AS DEFINED IN SECTION 12-61-723(1)(b), C.R.S.;
 - IDENTIFYING AND DOCUMENTING THE CONSERVATION VALUES AND THE PUBLIC BENEFITS FROM PROTECTING THOSE VALUES PRIOR TO ACCEPTING THE CONSERVATION EASEMENT;
 - c. WORKING WITH THE CONSERVATION EASEMENT GRANTOR TO IDENTIFY AND DESIGN THE PERMITTED USES, RESERVED RIGHTS, AND PROHIBITED USES FOR THE CONSERVATION EASEMENT ON AN INDIVIDUAL BASIS; AND
 - d. RECEIVING AND REVIEWING A BASELINE DOCUMENTATION REPORT FOR THE CONSERVATION EASEMENT BEFORE ACCEPTING THE DONATION, AND UPDATING THE REPORT AS NEEDED. THE BASELINE REPORT DOCUMENTS THE CONSERVATION VALUES AND CONDITION OF THE PROPERTY AT THE TIME OF CONVEYANCE.
 - 2. THE CONSERVATION EASEMENT HOLDER HAS AND FOLLOWS REASONABLE POLICIES AND PROCEDURES FOR REVIEWING CONSERVATION EASEMENTS. THESE INCLUDE, BUT ARE NOT LIMITED TO:
 - a. PERFORMING DUE DILIGENCE ON THE TITLE, WATER AND MINERAL RIGHTS ON THE PROPERTY BEFORE APPROVING THE TRANSACTION:
 - b. ENSURING ANY LIENS OR ENCUMBRANCES ARE SUBORDINATED OR ADDRESSED IN A MANNER SO THAT THE CONSERVATION RIGHTS SET FORTH IN THE DEED WILL BE ENSURED IN PERPETUITY:
 - c. HAVING AND FOLLOWING A POLICY FOR PHASED CONSERVATION EASEMENTS SUCH THAT EACH CONSERVATION

- EASEMENT OF A PHASED PROJECT HAS AN INDEPENDENT CONSERVATION PURPOSE AS DEFINED IN SECTION 12-61-723(1)(B), C.R.S.;
- d. OBTAINING A LEGAL REVIEW OF THE TRANSACTION APPROPRIATE TO THE COMPLEXITY OF THE TRANSACTION:
- e. USING APPROPRIATE EXPERTISE TO SUBSTANTIATE THE CONSERVATION VALUES; AND
- f. RECEIVING AND ADEQUATELY REVIEWING A COPY OF THE APPRAISAL FOR A CONSERVATION EASEMENT FOR WHICH A TAX CREDIT MAY BE CLAIMED PURSUANT TO SECTION 39-22-522, C.R.S.
- 3. THE CONSERVATION EASEMENT HOLDER HAS AND FOLLOWS REASONABLE POLICIES AND PROCEDURES FOR APPROVING CONSERVATION EASEMENTS. THESE INCLUDE, BUT ARE NOT LIMITED TO:
 - a. DECLINING PROJECTS THAT DO NOT HAVE CONSERVATION VALUE, THE NECESSARY DONATIVE INTENT OR APPEAR TO BE FRAUDULENT;
 - b. HAVING THE BOARD APPROVE ALL CONSERVATION EASEMENT DONATIONS, OR ESTABLISHING POLICIES DELEGATING THE AUTHORITY TO APPROVE TRANSACTIONS TO A QUALIFIED COMMITTEE OR OTHER DESIGNEE;
 - c. PROVIDING SUFFICIENT INFORMATION TO THE BOARD, A QUALIFIED COMMITTEE OR OTHER DESIGNEE FOR REVIEW BEFORE A CONSERVATION EASEMENT IS APPROVED; AND
 - d. ADVISING POTENTIAL CONSERVATION EASEMENT GRANTORS THAT THE ORGANIZATION DOES NOT GUARANTEE THE QUALIFICATION OF THE CONSERVATION EASEMENT FOR TAX CREDIT PURPOSES, AND THAT THEY SHOULD SEEK THEIR OWN LEGAL, FINANCIAL AND TAX ADVICE.
- C. STEWARDSHIP: PRACTICES AND CAPACITY
 - THE CONSERVATION EASEMENT HOLDER HAS AND FOLLOWS REASONABLE POLICIES AND PROCEDURES TO ENSURE THE SHORT-AND LONG-TERM MANAGEMENT OF ITS CONSERVATION EASEMENTS. THESE INCLUDE, BUT ARE NOT LIMITED TO:
 - a. HAVING ADEQUATE CAPACITY AND RESOURCES IN PLACE TO PROVIDE ANNUAL MONITORING OF EACH CONSERVATION EASEMENT HELD IN COLORADO;
 - b. MONITORING ALL CONSERVATION EASEMENTS ON AT LEAST AN ANNUAL BASIS, INCLUDING VISUALLY INSPECTING THE PROPERTY AND PERFORMING OTHER TYPES OF MONITORING ACTIONS AS APPROPRIATE;

- c. MONITORING IS DOCUMENTED BY A QUALIFIED INDIVIDUAL, AND THE DOCUMENTATION IS REVIEWED BY THE BOARD, A QUALIFIED COMMITTEE OR OTHER DESIGNEE:
- d. ENFORCING EVERY CONSERVATION EASEMENT DEED, AND ADDRESSING VIOLATIONS IN A MANNER APPROPRIATE TO THE SCALE OF THE VIOLATION:
- e. REVIEWING PROPOSED AMENDMENTS TO CONSERVATION EASEMENT DEEDS TO CONFIRM THEY DO NOT RESULT IN A NET LOSS OF CONSERVATION VALUE AND DO NOT CREATE AN IMPERMISSIBLE PRIVATE BENEFIT TO THE GRANTOR; AND
- f. PRESERVING ORIGINAL AND DUPLICATE COPIES OF NECESSARY AND IMPORTANT RECORDS, SUCH AS DEEDS, BASELINE REPORTS, MONITORING REPORTS AND APPRAISALS, IN A SAFE AND SECURE MANNER.
- 2. THE CONSERVATION EASEMENT HOLDER HAS THE NECESSARY PERSONNEL AND FINANCIAL CAPACITY AND POLICIES AND PROCEDURES TO ENSURE THE SHORT- AND LONG-TERM MANAGEMENT OF ITS CONSERVATION EASEMENTS. THESE MAY INCLUDE, BUT ARE NOT LIMITED TO:
 - a. ESTABLISHING LASTING DEDICATED STEWARDSHIP AND ENFORCEMENT FUNDS FOR THE MANAGEMENT AND ENFORCEMENT OF EVERY CONSERVATION EASEMENT HELD;
 - USING THE DEDICATED STEWARDSHIP AND ENFORCEMENT FUNDS FOR STEWARDSHIP- AND ENFORCEMENT-RELATED PURPOSES ONLY, OR OTHER ALLOWABLE USES ONLY AS ESTABLISHED THROUGH WRITTEN POLICIES;
 - c. DETERMINING THE APPROXIMATE AMOUNT OF STEWARDSHIP AND ENFORCEMENT FUNDS THAT WILL BE NEEDED FOR THE SHORT- AND LONG-TERM MANAGEMENT OF ALL CONSERVATION EASEMENTS; AND
 - d. PROCURING THE ADEQUATE STEWARDSHIP AND ENFORCEMENT FUNDS NEEDED WITH ALL CONSERVATION EASEMENTS.

D. FINANCE

THE CONSERVATION EASEMENT HOLDER HAS AND FOLLOWS REASONABLE FISCAL POLICIES AND PROCEDURES TO ENSURE THE TRANSPARENT AND RESPONSIBLE MANAGEMENT OF ITS ASSETS. THESE MAY INCLUDE, BUT ARE NOT LIMITED TO:

- HAVING THE BOARD REVIEW AND/OR REGULARLY ASSESS THE ORGANIZATION'S FINANCIAL STATUS, INCLUDING THE ANNUAL BUDGET AND ANY FINANCIAL CHANGES THAT HAVE OCCURRED; AND
- 2. HAVING A QUALIFIED INDIVIDUAL CONDUCT A FINANCIAL AUDIT OR OTHER FINANCIAL REVIEW ON AN ANNUAL BASIS.

E. GOVERNANCE

THE CONSERVATION EASEMENT HOLDER DEMONSTRATES IT HAS AND FOLLOWS REASONABLE POLICIES AND PROCEDURES TO ENSURE THE RESPONSIBLE MANAGEMENT OF CONFLICTS OF INTEREST AND ANY TRANSACTIONS WITH INSIDERS.

- 2.2. EXPIRATION DATE FOR CERTIFICATION

 CERTIFICATION FOR A CONSERVATION EASEMENT HOLDER EXPIRES ON DECEMBER
 31 FOLLOWING THE DATE OF ISSUANCE.
- 2.3. ELIGIBILITY FOR CONSERVATION EASEMENT HOLDERS AFTER REVOCATION A CONSERVATION EASEMENT HOLDER WHOSE CERTIFICATION TO HOLD A CONSERVATION EASEMENT HAS BEEN REVOKED IS RENDERED INELIGIBLE TO REAPPLY FOR CERTIFICATION UNTIL MORE THAN TWO YEARS HAVE ELAPSED FROM THE DATE OF REVOCATION OF THE CERTIFICATION. ANY RE-APPLICATION AFTER SUCH TWO-YEAR PERIOD IS REQUIRED TO BE SUBMITTED ON A NEW APPLICATION.

2.4. CERTIFICATION RENEWAL

RENEWAL OF A CONSERVATION EASEMENT HOLDER CERTIFICATION CAN BE EXECUTED ONLY WITH THE RENEWAL APPLICATION PROVIDED BY THE DIVISION, SUBMITTED AND ACCOMPANIED BY THE PRESCRIBED NONREFUNDABLE FEE BY DECEMBER 31 OF EACH YEAR.

2.5. REINSTATEMENT OF CERTIFICATION

A CERTIFICATION THAT HAS EXPIRED MAY BE REINSTATED WITHIN ONE YEAR AFTER THE DATE OF EXPIRATION IF THE HOLDER MEETS ALL THE REQUIREMENTS IN SECTION 12-61-720, C.R.S. AND RULE 2.1. A COMPLETE RENEWAL APPLICATION AND THE PRESCRIBED NONREFUNDABLE RENEWAL FEE MUST BE SUBMITTED TO THE DIVISION FOR REINSTATEMENT. CERTIFICATION IS EFFECTIVE ON THE DATE REINSTATEMENT IS ISSUED AND CANNOT BE APPLIED RETROACTIVELY. ANY CERTIFICATION THAT HAS BEEN EXPIRED GREATER THAN ONE YEAR MAY NOT BE REINSTATED.

2.6. CONDITIONAL CERTIFICATION

- A. THE DIRECTOR IN CONSULTATION WITH THE COMMISSION MAY ISSUE CONDITIONAL CERTIFICATION TO ANY CONSERVATION EASEMENT HOLDER THAT DOES NOT CLEARLY DEMONSTRATE, TO THE SATISFACTION OF THE DIRECTOR, COMPLIANCE WITH RULE 2.1. TITLED QUALIFICATIONS FOR CERTIFICATION TO HOLD CONSERVATION EASEMENTS. THE TERMS AND LENGTH OF CONDITIONAL CERTIFICATION WILL BE DETERMINED BY THE DIRECTOR AND MAY INCLUDE, BUT ARE NOT LIMITED TO:
 - 1. A REQUIREMENT THAT THE CONDITIONALLY CERTIFIED CONSERVATION EASEMENT HOLDER CO-HOLD CONSERVATION EASEMENTS FOR WHICH A STATE TAX CREDIT MAY BE CLAIMED WITH A FULLY CERTIFIED CONSERVATION EASEMENT HOLDER.
 - SUBMISSION OF ALL REQUESTED PROJECT AND GOVERNANCE DOCUMENTATION IN A MANNER PRESCRIBED BY THE DIRECTOR.
 - 3. APPROVAL OF PROJECT DOCUMENTATION BY THE DIRECTOR PRIOR TO THE CONSERVATION EASEMENT HOLDER ACCEPTING A NEW CONSERVATION EASEMENT.

- 4. ANY OTHER RESTRICTION OR TERM DEEMED NECESSARY BY THE DIRECTOR TO ENSURE ONGOING COMPLIANCE WITH ALL APPLICABLE STATUTES AND RULES.
- B. CONSERVATION EASEMENT HOLDERS GRANTED CONDITIONAL CERTIFICATION ARE SUBJECT TO ALL FEES, STATUTES AND RULES PROMULGATED FOR CERTIFIED CONSERVATION EASEMENT HOLDERS, INCLUDING, BUT NOT LIMITED TO RULE 2.1. TITLED QUALIFICATIONS FOR CERTIFICATION TO HOLD CONSERVATION EASEMENTS, AND ALL OTHER RULES REGARDING EXPIRATION AND RENEWAL OF STATE CERTIFICATION.

2.7. DISCIPLINARY ACTION

THE DIRECTOR MAY IMPOSE AN ADMINISTRATIVE FINE NOT TO EXCEED TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) FOR EACH SEPARATE OFFENSE; MAY ISSUE A LETTER OF ADMONITION; MAY PLACE A CONSERVATION EASEMENT HOLDER ON PROBATION UNDER THE DIRECTOR'S CLOSE SUPERVISION ON SUCH TERMS AND FOR SUCH TIME AS THE DIRECTOR DEEMS APPROPRIATE; AND MAY REFUSE TO RENEW, REVOKE, OR SUSPEND THE CERTIFICATION OF ANY CONSERVATION EASEMENT HOLDER IF, AFTER AN INVESTIGATION AND AFTER NOTICE AND HEARING PURSUANT TO THE PROVISIONS OF SECTION 24-4-104, C.R.S., THE DIRECTOR DETERMINES THAT THE CONSERVATION EASEMENT HOLDER OR ANY DIRECTOR, OFFICER, OR BOARD MEMBER:

- A. HAS MADE FALSE OR MISLEADING STATEMENTS OR MATERIAL OMISSION IN THEIR APPLICATION FOR CERTIFICATION:
- B. HAS MISREPRESENTED OR CONCEALED ANY MATERIAL FACT FROM A CONSERVATION EASEMENT GRANTOR:
- C. HAS EMPLOYED ANY DEVICE, SCHEME, OR ARTIFICE WITH INTENT TO DEFRAUD A CONSERVATION EASEMENT GRANTOR OR ANY GOVERNMENT AGENCY;
- D. HAS FAILED TO COMPLY WITH ANY STIPULATION OR AGREEMENT MADE WITH THE DIRECTOR; OR
- E. HAS FAILED TO COMPLY WITH ANY OF THE CERTIFICATION REQUIREMENTS, OR ANY LAWFUL RULE OR REGULATION PROMULGATED BY THE DIRECTOR.

2.8. INFORMATION REQUEST

A CONSERVATION EASEMENT HOLDER MUST FURNISH TO THE DIRECTOR SUCH INFORMATION OR DOCUMENTATION AS THE DIRECTOR IN HER/HIS SOLE DISCRETION DEEMS REASONABLY NECESSARY FOR THE ENFORCEMENT OF TITLE 12, ARTICLE 61, PART 7, C.R.S. OR ANY RULES ENACTED BY THE DIVISION. IF INFORMATION OR DOCUMENTATION IS REQUIRED, THE DIRECTOR MUST GIVE WRITTEN NOTICE, IN DETAIL, OF THE INFORMATION SO REQUIRED AND MUST ALLOW AN ADDITIONAL TWENTY-ONE (21) DAYS FROM DELIVERY TO PRESENT SUCH MATERIAL, WHICH PERIOD MAY BE EXTENDED ONLY UPON SHOWING OF GOOD CAUSE. WRITTEN NOTICE MAY BE FAXED, HAND-DELIVERED OR MAILED TO THE PARTY ENTITLED THERETO. IF FAXED OR HAND DELIVERED, SAID NOTICE IS DEEMED DELIVERED UPON CONFIRMATION OF SUCCESSFUL TRANSMISSION OF THE FAX OR UPON HAND DELIVERY. IF MAILED, SAID NOTICE MUST BE MAILED BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AND SAID NOTICE IS DEEMED DELIVERED THE DATE OF MAILING.

- 2.9. CEASE AND DESIST
 IF THE DIVISION HAS REASONABLE CAUSE TO BELIEVE ANY PUBLIC OR PRIVATE
 ORGANIZATION IS NOT IN COMPLIANCE WITH SECTION 38-30.5-104 (2), C.R.S. AND
 SECTION 12-61-720, C.R.S., THE DIRECTOR MAY ENTER AN ORDER REQUIRING
 SUCH ORGANIZATION TO CEASE AND DESIST FROM ATTEMPTING TO HOLD A
 CONSERVATION EASEMENT FOR WHICH A STATE TAX CREDIT MAY BE CLAIMED.
- 2.10. TRANSFERRING CONSERVATION EASEMENTS TO NON-CERTIFIED ENTITIES A CONSERVATION EASEMENT HOLDER MUST NOT ASSIGN OR OTHERWISE TRANSFER ALL OR A PARTIAL INTEREST IN A CONSERVATION EASEMENT FOR WHICH A STATE TAX CREDIT MAY BE CLAIMED TO A NON-CERTIFIED ORGANIZATION. AN ORGANIZATION MUST NOT ACCEPT AN ASSIGNED OR OTHERWISE TRANSFERRED INTEREST IN A CONSERVATION EASEMENT FOR WHICH A STATE TAX CREDIT MAY BE CLAIMED IF THEY ARE NOT CERTIFIED AT THE TIME OF ACCEPTANCE. GOVERNMENTAL ENTITIES TRANSFERRING A PARTIAL INTEREST IN A CONSERVATION EASEMENT TO ANOTHER GOVERNMENTAL ENTITY IN ACCORDANCE WITH AN ESTABLISHED WRITTEN AGREEMENT ARE EXEMPT FROM THIS PROHIBITION ON TRANSFERRING A PARTIAL INTEREST IN A CONSERVATION EASEMENT. THE CERTIFIED GRANTEE AND ALL CERTIFIED ORGANIZATIONS RETAINING A PARTIAL INTEREST IN THE CONSERVATION EASEMENT MUST REMAIN RESPONSIBLE FOR STEWARDSHIP AND DEFENSE OF THE CONSERVATION EASEMENT AT ALL TIMES.

2.11. COURTESY FILING

A CERTIFIED CONSERVATION EASEMENT HOLDER MUST PROVIDE THE FOLLOWING INFORMATION AND/OR DOCUMENTATION TO THE DIVISION WITHIN 30 DAYS OF A SUBSTANTIVE CHANGE IN:

- A. PHYSICAL OR MAILING ADDRESS OF THE ORGANIZATION;
- B. AUTHORIZED CONTACT PERSON; OR
- C. POLICY NECESSARY FOR COMPLIANCE WITH RULE 2.1.

A hearing on the above subject matter will be held on Monday, November 3, 2014, at the Colorado Division of Real Estate, 1560 Broadway, Suite 1250-C, Denver, Colorado 80202 beginning at 9:00 a m

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered.

NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING November 3, 2014

RULE CHAPTER 3. CONSERVATION EASEMENT DONATIONS MADE ON OR AFTER JANUARY 1, 2011, BUT PRIOR TO JANUARY 1, 2014

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Colorado Department of Regulatory Agencies and the Division of Real Estate to promulgate rules, or to amend, repeal or repeal and re-enact the present rules related to conservation easements.

STATEMENT OF BASIS

The statutory basis for the rules titled <u>Conservation Easements</u> is Chapter 7 of Title 12, Article 61, Colorado Revised Statutes, as amended.

STATEMENT OF PURPOSE

The purpose of this rule is to effectuate the legislative directive to promulgate necessary and appropriate rules in conformity with section 12-61-722, C.R.S.

SPECIFIC PURPOSE OF THIS RULEMAKING

The specific purpose of this rule is to define the requirements and procedures to submit an application for a tax credit certificate for conservation easements donated on or after January 1, 2011, but prior to January 1, 2014.

Proposed New, Amended and Repealed Rules

[Deleted material showed struck through, new material shown ALL CAPS. Rules, or portions of rules, which are unaffected are reproduced. Readers are advised to obtain a copy of the complete rules of the Division at http://www.sos.state.co.us]

CHAPTER 3: CONSERVATION EASEMENT DONATIONS MADE ON OR AFTER JANUARY 1, 2011, BUT PRIOR TO JANUARY 1, 2014

- 3.1. A VALID DEED OF CONSERVATION EASEMENT MUST BE RECORDED BEFORE A CLAIM CAN BE SUBMITTED AND A TAX CREDIT CERTIFICATE ISSUED.
- 3.2. A CLAIM FOR A TAX CREDIT CERTIFICATE MUST INCLUDE THE FOLLOWING:

- A. A SIGNED AND COMPLETED FORM TITLED: "APPLICATION FOR A CONSERVATION EASEMENT TAX CREDIT CERTIFICATE," APPROVED BY THE DIVISION:
- B. A SIGNED AND COMPLETED FORM TITLED: "AFFIDAVIT FOR CONSERVATION EASEMENT APPRAISALS," APPROVED BY THE COLORADO BOARD OF REAL ESTATE APPRAISERS; AND
- C. A COPY OF THE RECORDED DEED OF CONSERVATION EASEMENT.
- 3.3. A TAXPAYER WHO SUBMITS A CLAIM FOR A TAX CREDIT CERTIFICATE TO THE DIVISION MUST PAY A NONREFUNDABLE FEE AS PRESCRIBED BY THE DIVISION.
- 3.4. AN ALTERNATIVE DOCUMENT MAY BE SUBSTITUTED FOR THE COPY OF THE RECORDED DEED OF CONSERVATION EASEMENT AS EVIDENCE A CONSERVATION EASEMENT WAS CONVEYED. THE ALTERNATIVE DOCUMENT MUST ORIGINATE FROM THE COUNTY OR COUNTIES IN WHICH THE CONSERVATION EASEMENT WAS RECORDED AND DISCLOSE THE FOLLOWING:
 - A. THE RECEPTION NUMBER;
 - B. A DESCRIPTION OF THE PROPERTY:
 - C. THE DATE AND TIME WHICH THE EASEMENT WAS RECORDED; AND
 - D. THE NAME OF THE GRANTOR AND GRANTEE.
- 3.5. A CLAIM FOR A TAX CREDIT CERTIFICATE IS DEEMED RECEIVED BY THE DIVISION FOR PURPOSES OF SECTION 39-22-522 (2.5), C.R.S., WHEN THE APPLICATION AND ALL OTHER REQUIRED DOCUMENTS ARE SIGNED AND INITIALED, PROPERLY FILLED OUT, AND DATE-STAMPED BY THE DIVISION UPON RECEIPT. THE DIVISION IS NOT RESPONSIBLE FOR ANY CLAIMS NOT RECEIVED. ONLY AFTER THE CLAIM IS DEEMED TO BE RECEIVED WILL THE CLAIM BE APPLIED TOWARDS THE LIMIT FOR THE APPLICABLE YEAR.
- 3.6. THE TAXPAYER MUST SIGN, UNDERSTAND, AND ADHERE TO ALL DISCLOSURES LISTED IN PART THREE OF THE FORM TITLED: "APPLICATION FOR A CONSERVATION EASEMENT TAX CREDIT CERTIFICATE," IN THE FORM APPROVED BY THE DIVISION AT THE TIME THE CLAIM IS MADE.
- 3.7. AFTER THE TAX CREDIT CERTIFICATE HAS BEEN ISSUED, THE DEPARTMENT OF REVENUE HAS THE AUTHORITY TO DETERMINE IF THE CONSERVATION EASEMENT TAX CREDIT DOES NOT COMPLY WITH STATUTORY AND REGULATORY REQUIREMENTS UNDER ITS JURISDICTION. THE DIVISION IS NOT RESPONSIBLE SHOULD THE DEPARTMENT OF REVENUE DETERMINE A CONSERVATION EASEMENT TAX CREDIT DOES NOT COMPLY WITH STATUTORY AND REGULATORY REQUIREMENTS UNDER ITS JURISDICTION.
- 3.8. A CLAIM FOR A TAX CREDIT CERTIFICATE IS INELIGIBLE TO RECEIVE A TAX CREDIT CERTIFICATE AND WILL NOT BE APPLIED TOWARDS THE LIMIT FOR THE APPLICABLE YEAR IF IT IS BASED ON A CONSERVATION EASEMENT DONATION WHERE:
 - A. THE APPRAISER ASSOCIATED WITH THE CLAIM DOES NOT HOLD A VALID ACTIVE LICENSE AS A CERTIFIED GENERAL APPRAISER AS OF THE EFFECTIVE DATE OF VALUE IN THE APPRAISAL REPORT OR THE CERTIFIED GENERAL

- APPRAISER HAS A PRACTICE RESTRICTION PROHIBITING THAT APPRAISER FROM CONDUCTING AN APPRAISAL FOR A CONSERVATION EASEMENT: OR
- B. THE CONSERVATION EASEMENT HOLDER IS NOT CERTIFIED BY THE DIVISION AT THE TIME OF THE DONATION.
- 3.9. A TAX CREDIT CERTIFICATE MAY NOT BE USED TO CLAIM AN INCOME TAX CREDIT WITH THE DEPARTMENT OF REVENUE PRIOR TO THE YEAR FOR WHICH THE TAX CREDIT CERTIFICATE IS ISSUED BY THE DIVISION.
- 3.10. IF MORE THAN ONE CLAIM IS SUBMITTED TO THE DIVISION ON THE SAME DAY, THE TAX CREDIT CERTIFICATES WITH RESPECT TO THOSE CLAIMS WILL BE ISSUED IN THE ORDER THAT THE CONSERVATION EASEMENT DEEDS WERE FIRST RECORDED WITH THE APPROPRIATE COUNTY OR COUNTIES.
- 3.11. IN THE EVENT A PORTION OF A CLAIM DOES NOT QUALIFY UNDER THE AGGREGATE LIMIT FOR 2011 OR 2012, A SECOND CERTIFICATE WILL BE ISSUED FOR THE REMAINING TAX CREDIT AMOUNT FOR THE SUBSEQUENT YEAR.
- 3.12. IN THE EVENT A TAX CREDIT CERTIFICATE HAS BEEN ISSUED FOR A CONSERVATION EASEMENT DONATION AND THE DONATION VALUE INCREASES PURSUANT TO A REVISED APPRAISAL, THE TAXPAYER MAY SUBMIT A SECOND CLAIM TO THE DIVISION FOR THE INCREASED AMOUNT. A SECOND CLAIM MUST BE SUBMITTED TO THE DIVISION IN ACCORDANCE WITH THIS RULE AND WILL BE ASSIGNED A TAX CREDIT CERTIFICATE IN THE ORDER RECEIVED AMONG ALL OTHER CLAIMS SUBMITTED TO THE DIVISION. A SECOND TAX CREDIT CERTIFICATE FOR A SECOND CLAIM MAY BE ISSUED FOR A DIFFERENT YEAR.
- 3.13. THE DIVISION MAY CONSULT WITH THE TAXPAYER, THE TAXPAYER'S AUTHORIZED REPRESENTATIVE, THE CONSERVATION EASEMENT HOLDER, APPRAISER, THE COMMISSION AND THE DEPARTMENT OF REVENUE REGARDING A CLAIM FOR A TAX CREDIT CERTIFICATE.
- 3.14. IN THE EVENT THE AGGREGATE LIMIT FOR A GIVEN CALENDAR YEAR IS NOT EXCEEDED AND THE DIVISION RECEIVES AND APPROVES A COMPLETE APPLICATION FOR A TAX CREDIT CERTIFICATE FOR A CONSERVATION EASEMENT DONATED ON OR AFTER JANUARY 1, 2011, THE DIVISION MAY ISSUE A TAX CREDIT CERTIFICATE FROM THE REMAINING LIMIT. ISSUANCE OF THE TAX CREDIT CERTIFICATE IN THIS CIRCUMSTANCE CAN ONLY OCCUR IF THE CONSERVATION EASEMENT DONATION WAS RECORDED PRIOR TO OR DURING THE YEAR IN WHICH THE AGGREGATE LIMIT WAS NOT REACHED.

A hearing on the above subject matter will be held on Monday, November 3, 2014, at the Colorado Division of Real Estate, 1560 Broadway, Suite 1250-C, Denver, Colorado 80202 beginning at 9:00 a.m.

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered.

NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING November 3, 2014

RULE CHAPTER 4. CONSERVATION EASEMENT DONATIONS MADE ON OR AFTER JANUARY 1, 2014

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Colorado Department of Regulatory Agencies and the Division of Real Estate to promulgate rules, or to amend, repeal or repeal and re-enact the present rules related to conservation easements.

STATEMENT OF BASIS

The statutory basis for the rules titled <u>Conservation Easements</u> is Chapter 7 of Title 12, Article 61, Colorado Revised Statutes, as amended.

STATEMENT OF PURPOSE

The purpose of this rule is to effectuate the legislative directive to promulgate necessary and appropriate rules in conformity with sections 12-61-722 and 12-61-723, C.R.S.

SPECIFIC PURPOSE OF THIS RULEMAKING

The specific purpose of this rule is to define the requirements and procedures regarding the submission and review of an application for a tax credit certificate for conservation easements donated on or after January 1, 2014.

Proposed New, Amended and Repealed Rules

[Deleted material showed struck through, new material shown ALL CAPS. Rules, or portions of rules, which are unaffected are reproduced. Readers are advised to obtain a copy of the complete rules of the Division at http://www.sos.state.co.us]

CHAPTER 4: CONSERVATION EASEMENT DONATIONS MADE ON OR AFTER JANUARY 1, 2014

- 4.1. APPLICATION SUBMISSION AND REVIEW FOR A TAX CREDIT CERTIFICATE
 - A. AN APPLICATION IS DEEMED COMPLETE BY THE DIVISION IN ACCORDANCE WITH SECTION 12-61-723, C.R.S., WHEN THE APPLICATION AND ALL OTHER REQUIRED DOCUMENTS ARE SIGNED AND INITIALED, PROPERLY FILLED OUT, AND DATE-STAMPED BY THE DIVISION UPON RECEIPT. THE DIVISION IS NOT RESPONSIBLE FOR ANY APPLICATION NOT RECEIVED. ONLY AFTER THE APPLICATION IS DEEMED COMPLETE WILL THE APPLICATION BE REVIEWED.

- B. FOR AN APPLICATION TO BE DEEMED COMPLETE AND A TAX CREDIT CERTIFICATE TO BE ASSIGNED IN ACCORDANCE WITH RULE 4.2., THE APPLICATION MUST INCLUDE THE DOCUMENTATION AND FEE AS REQUIRED IN SECTION 12-61-723(5), C.R.S., AND ALSO PROVIDE A SIGNED AND COMPLETED FORM TITLED: "APPLICATION FOR A CONSERVATION EASEMENT TAX CREDIT CERTIFICATE," APPROVED BY THE DIVISION. THE FEE IS NONREFUNDABLE.
- C. UPON THE APPLICATION BEING DEEMED COMPLETE, THE DIRECTOR OR COMMISSION MAY REQUEST ADDITIONAL INFORMATION OR DOCUMENTATION NECESSARY TO MAKE A FINAL DETERMINATION REGARDING THE APPLICATION.
- D. THE LANDOWNER OR ITS AUTHORIZED DESIGNEE TO SIGN ON BEHALF OF THE LANDOWNER MUST SIGN, UNDERSTAND, AND ADHERE TO ALL DISCLOSURES LISTED IN THE "APPLICATION FOR A CONSERVATION EASEMENT TAX CREDIT CERTIFICATE," IN THE FORM APPROVED BY THE DIVISION AT THE TIME THE APPLICATION IS MADE. THE SIGNATORY FOR THE APPLICATION MUST BE AUTHORIZED AS DESCRIBED IN THIS SUB PARAGRAPH D.
 - 1. IF THE LANDOWNER IS A CORPORATION, ONE OF THE OFFICERS OR DIRECTORS AUTHORIZED TO APPLY ON BEHALF OF THE CORPORATION:
 - 2. IF THE LANDOWNER IS A PARTNERSHIP, ONE OF THE GENERAL PARTNERS OF THE PARTNERSHIP AUTHORIZED TO APPLY ON BEHALF OF THE PARTNERSHIP;
 - 3. IF THE LANDOWNER IS A JOINT OWNER, SUCH INDIVIDUAL AUTHORIZED TO APPLY ON BEHALF OF ALL JOINT OWNERS;
 - 4. IF THE LANDOWNER IS A LIMITED LIABILITY COMPANY, ONE OF THE MANAGERS OR MEMBER-MANAGERS AUTHORIZED TO APPLY ON BEHALF OF THE COMPANY;
 - 5. IF THE LANDOWNER IS A TRUST, ONE OF THE TRUSTEES AUTHORIZED TO APPLY ON BEHALF OF THE TRUST:
 - 6. IF THE LANDOWNER IS A S CORPORATION, ONE OF THE SHAREHOLDERS AUTHORIZED TO APPLY ON BEHALF OF THE S CORPORATION; AND
 - 7. IF THE LANDOWNER IS AN ESTATE, ONE OF THE PERSONAL REPRESENTATIVES AUTHORIZED TO APPLY ON BEHALF OF THE ESTATE.
- E. A TAX CREDIT CERTIFICATE APPLICATION IS INELIGIBLE AND WILL NOT BE APPLIED TOWARDS THE LIMIT FOR THE APPLICABLE YEAR IF IT IS BASED ON A CONSERVATION EASEMENT DONATION IN WHICH:
 - 1. THE APPRAISER WHO CONDUCTED THE APPRAISAL SUBMITTED WITH THE APPLICATION DOES NOT HOLD A VALID ACTIVE LICENSE AS A CERTIFIED GENERAL APPRAISER AS OF THE EFFECTIVE DATE OF VALUE IN THE APPRAISAL REPORT OR THE CERTIFIED GENERAL APPRAISER HAS A PRACTICE RESTRICTION PROHIBITING THAT APPRAISER FROM CONDUCTING AN APPRAISAL FOR A CONSERVATION EASEMENT; OR

- 2. THE CONSERVATION EASEMENT HOLDER IS NOT CERTIFIED BY THE DIVISION AT THE TIME OF THE DONATION.
- F. SUBMISSION OF AN APPLICATION DOES NOT GUARANTEE ISSUANCE OF A TAX CREDIT CERTIFICATE.
- G. THE DIRECTOR OR COMMISSION MAY CONSULT WITH THE LANDOWNER, THE LANDOWNER'S AUTHORIZED REPRESENTATIVE, THE CONSERVATION EASEMENT HOLDER, THE APPRAISER, THE DEPARTMENT OF REVENUE AND ANY OTHER ENTITY OR INDIVIDUAL NECESSARY TO ASSIST IN THE REVIEW OF AN APPLICATION FOR A TAX CREDIT CERTIFICATE.
- H. APPLICATIONS DEEMED COMPLETED WILL BE REVIEWED IN AN AVERAGE OF 120 DAYS IN ACCORDANCE WITH SECTION 12-61-723, C.R.S.
- I. ANY EXTENSIONS OF DEADLINES IN ACCORDANCE WITH SECTION 12-61-723(7)(D), C.R.S., MUST BE AGREED TO IN WRITING.
- J. THE DIRECTOR HAS THE AUTHORITY, IN ACCORDANCE WITH SECTION 12-61-723(9), C.R.S., TO REQUEST A SECOND APPRAISAL IF THE COMMISSION AND THE DIRECTOR DETERMINE THE ORIGINAL APPRAISAL IS NOT CREDIBLE. THE SECOND APPRAISAL MUST BE CONDUCTED BY AN APPRAISER WHO HOLDS A VALID ACTIVE LICENSE AS A CERTIFIED GENERAL APPRAISER WITH NO PRACTICE RESTRICTIONS PROHIBITING THAT APPRAISER FROM CONDUCTING THE ASSIGNMENT AND WHO IS INDEPENDENT AND NOT AFFILIATED WITH THE FIRST APPRAISER. THE REQUEST FOR A SECOND APPRAISAL MAY INCLUDE A NEW APPRAISAL OR A USPAP STANDARD 3 REVIEW WITH AN OPINION OF VALUE.
- K. THE DIRECTOR OR THE COMMISSION MAY CONDUCT SETTLEMENT DISCUSSIONS WITH THE LANDOWNER AT ANY TIME DURING THE APPLICATION REVIEW PROCESS.

4.2. ASSIGNMENT AND ISSUANCE OF A TAX CREDIT CERTIFICATE

- A. ONCE AN APPLICATION IS DEEMED COMPLETE, THE DOLLAR AMOUNT APPLIED FOR IN THE APPLICATION WILL BE ASSIGNED TO THE LANDOWNER AND APPLIED TOWARD THE AGGREGATE ANNUAL CAP IN THE ORDER THE APPLICATION IS DEEMED COMPLETE. THE AMOUNT APPLIED TOWARD THE AGGREGATE ANNUAL CAP WILL NOT BE AVAILABLE TO ANY SUBSEQUENT APPLICATION.
- B. IF MORE THAN ONE APPLICATION IS DEEMED COMPLETE BY THE DIVISION ON THE SAME DAY, THE AMOUNT APPLIED FOR WILL BE APPLIED TOWARD THE AGGREGATE ANNUAL CAP IN THE ORDER THAT THE CONSERVATION EASEMENT DEEDS WERE RECORDED WITH THE RESPECTIVE COUNTIES.
- C. A TAX CREDIT CERTIFICATE WILL ONLY BE ISSUED IN WHOLE DOLLAR AMOUNTS.
- D. A TAX CREDIT CERTIFICATE MAY NOT BE USED TO CLAIM AN INCOME TAX CREDIT WITH THE DEPARTMENT OF REVENUE PRIOR TO THE YEAR FOR WHICH THE TAX CREDIT CERTIFICATE IS ISSUED BY THE DIVISION.
- E. IN THE EVENT A PORTION OF AN APPROVED TAX CREDIT CERTIFICATE APPLICATION CANNOT BE ISSUED UNDER THE AVAILABLE TAX CREDIT CAP

- FOR ANY GIVEN YEAR, A SECOND CERTIFICATE WILL BE ISSUED FOR THE REMAINING TAX CREDIT AMOUNT FOR THE SUBSEQUENT YEAR SUBJECT TO THE WAITLIST LIMIT SET FORTH IN SECTION 39-22-522 (2.5), C.R.S.
- F. IN THE EVENT THAT ALL OR A PORTION OF AN APPROVED TAX CREDIT CERTIFICATE APPLICATION CANNOT BE ISSUED UNDER THE AVAILABLE WAITLIST LIMIT FOR THE FOLLOWING CALENDAR YEAR, THE REMAINING AMOUNT WILL BE ISSUED A TAX CREDIT CERTIFICATE IN THE NEXT AVAILABLE CALENDAR YEAR.
- G. IN THE EVENT THE AGGREGATE LIMIT FOR A GIVEN CALENDAR YEAR IS NOT EXCEEDED AND THE DIVISION RECEIVES AND APPROVES A COMPLETE APPLICATION FOR A TAX CREDIT CERTIFICATE FOR A CONSERVATION EASEMENT DONATED ON OR AFTER JANUARY 1, 2011, THE DIVISION MAY ISSUE A TAX CREDIT CERTIFICATE FROM THE REMAINING LIMIT. ISSUANCE OF THE TAX CREDIT CERTIFICATE IN THIS CIRCUMSTANCE CAN ONLY OCCUR IF THE CONSERVATION EASEMENT DONATION WAS RECORDED PRIOR TO OR DURING THE YEAR IN WHICH THE AGGREGATE LIMIT WAS NOT REACHED.

4.3. APPLICATION DENIAL AND APPEAL

- A. IF AN APPLICATION IS DENIED, THE ASSIGNED DOLLAR AMOUNT APPLIED TOWARD THE AGGREGATE ANNUAL CAP FOR THAT APPLICATION WILL NOT BE AVAILABLE FOR USE BY ANY SUBSEQUENT APPLICATION.
- B. THE LANDOWNER MAY SUBMIT A NEW APPLICATION IF THE DENIAL OF THE ORIGINAL APPLICATION IS FINAL PURSUANT TO SECTION 12-61-723(12), C.R.S. THE NEW APPLICATION MUST BE SUBMITTED PURSUANT TO RULE 4.1. AND WILL BE APPLIED TOWARD THE AGGREGATE ANNUAL CAP IN THE ORDER THE NEW APPLICATION IS DEEMED COMPLETE.
- C. APPEAL OF THE DIRECTOR'S OR THE COMMISSION'S DENIAL OF AN APPLICATION MUST BE MADE IN WRITING BY EITHER THE LANDOWNER OR THE LANDOWNER'S AUTHORIZED REPRESENTATIVE. THE WRITTEN APPEAL OF THE DENIAL MUST BE SENT BY CERTIFIED MAIL AND POSTMARKED WITHIN 30 DAYS OF THE ISSUANCE OF THE DENIAL.

4.4. PRELIMINARY ADVISORY OPINIONS

- A. PRIOR TO AN APPLICATION FOR A TAX CREDIT CERTIFICATE, A LANDOWNER MAY REQUEST A PRELIMINARY ADVISORY OPINION REGARDING THE ISSUANCE OF A TAX CREDIT CERTIFICATE. SUCH OPINIONS MAY CONSIDER:
 - 1. THE CREDIBILITY OF THE APPRAISAL PURSUANT TO SECTION 12-61-723(3)(B), C.R.S.; AND/OR
 - 2. WHETHER A CONSERVATION EASEMENT DONATION FOR WHICH A TAX CREDIT IS TO BE CLAIMED IS A QUALIFIED CONSERVATION CONTRIBUTION PURSUANT TO SECTION 12-61-723(3)(d), C.R.S.
- B. A LANDOWNER REQUESTING SUCH AN OPINION MUST DO SO IN A FORM TITLED: "APPLICATION FOR A CONSERVATION EASEMENT TAX CREDIT CERTIFICATE PRELIMINARY ADVISORY OPINION," APPROVED BY THE DIVISION. AN APPLICATION FOR A PRELIMINARY ADVISORY OPINION IS DEEMED COMPLETE BY THE DIVISION WHEN THE APPLICATION AND ALL OTHER REQUIRED DOCUMENTS ARE SIGNED AND INITIALED, PROPERLY

FILLED OUT AND DATE-STAMPED BY THE DIVISION UPON RECEIPT. THE DIVISION IS NOT RESPONSIBLE FOR ANY APPLICATIONS NOT RECEIVED. ONLY AFTER THE APPLICATION IS DEEMED COMPLETE WILL THE APPLICATION BE REVIEWED.

- C. THE LANDOWNER OR ITS AUTHORIZED DESIGNEE TO SIGN ON BEHALF OF THE LANDOWNER MUST SIGN, UNDERSTAND, AND ADHERE TO ALL DISCLOSURES LISTED IN THE "APPLICATION FOR A CONSERVATION EASEMENT TAX CREDIT CERTIFICATE PRELIMINARY ADVISORY OPINION," IN THE FORM APPROVED BY THE DIVISION AT THE TIME THE APPLICATION IS MADE. THE SIGNATORY FOR THE APPLICATION MUST BE AUTHORIZED AS DESCRIBED IN THIS SUB PARAGRAPH C.
 - 1. IF THE LANDOWNER IS A CORPORATION, ONE OF THE OFFICERS OR DIRECTORS AUTHORIZED TO APPLY ON BEHALF OF THE CORPORATION:
 - 2. IF THE LANDOWNER IS A PARTNERSHIP, ONE OF THE GENERAL PARTNERS OF THE PARTNERSHIP AUTHORIZED TO APPLY ON BEHALF OF THE PARTNERSHIP:
 - 3. IF THE LANDOWNER IS A JOINT OWNER, SUCH INDIVIDUAL AUTHORIZED TO APPLY ON BEHALF OF ALL JOINT OWNERS:
 - 4. IF THE LANDOWNER IS A LIMITED LIABILITY COMPANY, ONE OF THE MANAGERS OR MEMBER-MANAGERS AUTHORIZED TO APPLY ON BEHALF OF THE COMPANY:
 - 5. IF THE LANDOWNER IS A TRUST, ONE OF THE TRUSTEES AUTHORIZED TO APPLY ON BEHALF OF THE TRUST;
 - 6. IF THE LANDOWNER IS A S CORPORATION, ONE OF THE SHAREHOLDERS AUTHORIZED TO APPLY ON BEHALF OF THE S CORPORATION; AND
 - 7. IF THE LANDOWNER IS AN ESTATE, ONE OF THE PERSONAL REPRESENTATIVES AUTHORIZED TO APPLY ON BEHALF OF THE ESTATE.
- D. A LANDOWNER REQUESTING A PRELIMINARY ADVISORY OPINION IS NOT AN APPLICANT FOR A TAX CREDIT CERTIFICATE. THE ISSUANCE OF A FAVORABLE PRELIMINARY ADVISORY OPINION DOES NOT GUARANTEE THE APPROVAL OF A TAX CREDIT CERTIFICATE APPLICATION OR THE ISSUANCE OF THE TAX CREDIT CERTIFICATE. THE ISSUANCE OF EITHER A FAVORABLE OR NONFAVORABLE PRELIMINARY ADVISORY OPINION BY THE DIVISION WILL NOT ACT TO PROHIBIT A LANDOWNER FROM SUBMITTING AN APPLICATION FOR A TAX CREDIT CERTIFICATE.
- E. TO BE DEEMED COMPLETE, A REQUEST FOR A PRELIMINARY ADVISORY OPINION REGARDING THE CREDIBILITY OF THE APPRAISAL MUST INCLUDE:
 - 1. THE DRAFT OR FINAL APPRAISAL TO BE CONSIDERED: AND
 - 2. ANY OTHER RELEVANT INFORMATION OR DOCUMENTATION THE DIRECTOR DEEMS NECESSARY TO MAKE A PRELIMINARY OPINION REGARDING THE APPRAISAL; AND

- 3. THE REQUIRED FEE AS PRESCRIBED BY THE DIVISION. THE FEE IS NONREFUNDABLE.
- F. TO BE DEEMED COMPLETE, A REQUEST FOR A PRELIMINARY ADVISORY OPINION REGARDING THE QUALIFICATION OF THE CONSERVATION CONTRIBUTION MUST INCLUDE:
 - THE DRAFT OR RECORDED DEED OF CONSERVATION EASEMENT TO BE CONSIDERED;
 - 2. DOCUMENTATION SUPPORTING THE CONSERVATION PURPOSE OF THE EASEMENT;
 - 3. ANY OTHER RELEVANT INFORMATION OR DOCUMENTATION THE COMMISSION DEEMS NECESSARY TO MAKE A PRELIMINARY OPINION REGARDING THE QUALIFICATION OF THE CONSERVATION CONTRIBUTION; AND
 - 4. THE REQUIRED FEE AS PRESCRIBED BY THE DIVISION. THE FEE IS NONREFUNDABLE.
- G. THE DIRECTOR AND THE COMMISSION WILL REVIEW APPLICATIONS FOR PRELIMINARY ADVISORY OPINIONS AND ISSUE EITHER A FAVORABLE OR NONFAVORABLE OPINION WITHIN AN AVERAGE OF 120 DAYS.
- H. A NONFAVORABLE OPINION WILL INCLUDE A DESCRIPTION OF ANY POTENTIAL DEFICIENCIES IDENTIFIED BY THE DIRECTOR OR THE COMMISSION IN WRITING.
- I. THE ISSUANCE OF A PRELIMINARY ADVISORY OPINION WILL NOT LIMIT THE AUTHORITY OF THE DIRECTOR OR THE COMMISSION TO MAKE A FINAL DETERMINATION TO APPROVE OR DENY AN APPLICATION FOR A TAX CREDIT CERTIFICATE CONTRARY TO THE PRELIMINARY ADVISORY OPINION; LIMIT THE DIRECTOR'S AUTHORITY TO INVESTIGATE A CONSERVATION EASEMENT HOLDER; OR LIMIT THE BOARD OF REAL ESTATE APPRAISERS' AUTHORITY TO INVESTIGATE AN APPRAISER.
- J. THE DIRECTOR OR COMMISSION MAY CONSULT WITH THE LANDOWNER, THE LANDOWNER'S AUTHORIZED REPRESENTATIVE, THE CONSERVATION EASEMENT HOLDER, THE APPRAISER, THE DEPARTMENT OF REVENUE AND ANY OTHER ENTITY OR INDIVIDUAL NECESSARY IN ASSISTING IN THE REVIEW OF AN APPLICATION FOR A PRELIMINARY ADVISORY OPINION.
- K. PRELIMINARY ADVISORY OPINIONS ARE NOT APPEALABLE.

A hearing on the above subject matter will be held on Monday, November 3, 2014, at the Colorado Division of Real Estate, 1560 Broadway, Suite 1250-C, Denver, Colorado 80202 beginning at 9:00 a.m.

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth

above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered.

NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING November 3, 2014

RULE CHAPTER 5. DECLARATORY ORDERS

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Colorado Department of Regulatory Agencies and the Division of Real Estate to promulgate rules, or to amend, repeal or repeal and re-enact the present rules related to conservation easements.

STATEMENT OF BASIS

The statutory basis for the rules titled <u>Conservation Easements</u> is Chapter 7 of Title 12, Article 61, Colorado Revised Statutes, as amended.

STATEMENT OF PURPOSE

The purpose of this rule is to effectuate the legislative directive to promulgate necessary and appropriate rules pursuant to sections 12-61-720 and 12-61-722, C.R.S.

SPECIFIC PURPOSE OF THIS RULEMAKING

The specific purpose of this rule is to define the requirements and procedures to petition for a declaratory order.

Proposed New, Amended and Repealed Rules

[Deleted material showed struck through, new material shown ALL CAPS. Rules, or portions of rules, which are unaffected are reproduced. Readers are advised to obtain a copy of the complete rules of the Division at http://www.sos.state.co.us]

CHAPTER 5: DECLARATORY ORDERS

5.1. PETITION FOR AN ORDER
ANY PERSON MAY PETITION THE DIRECTOR OR THE COMMISSION FOR A
DECLARATORY ORDER TO TERMINATE CONTROVERSIES OR TO REMOVE
UNCERTAINTIES AS TO THE APPLICABILITY TO THE PETITIONER OF ANY
STATUTORY PROVISIONS OR OF ANY RULE OR ORDER OF EITHER THE
DIRECTOR OR THE COMMISSION.

- A. A PETITIONER MAY PETITION THE DIRECTOR FOR A DECLARATORY ORDER BASED UPON HIS/HER AUTHORITY AND RESPONSIBILITY DESCRIBED IN SECTION 12-61-723(3)(b) and (c), C.R.S.
- B. A PETITIONER MAY PETITION THE COMMISSION FOR A DECLARATORY ORDER BASED UPON ITS AUTHORITY AND RESPONSIBILITY DESCRIBED IN SECTION 12-61-723(3)(d), C.R.S.
- 5.2. DETERMINATION WHETHER TO RULE
 WITHOUT PRIOR NOTICE TO THE PETITIONER, THE DIRECTOR IN HIS/HER
 DISCRETION OR THE COMMISSION IN ITS DISCRETION WILL DETERMINE
 WHETHER TO RULE UPON ANY SUCH PETITION. IF THE DIRECTOR OR THE
 COMMISSION DETERMINES TO NOT RULE UPON SUCH A PETITION, THE
 DIRECTOR OR THE COMMISSION WILL ISSUE A WRITTEN ORDER DISPOSING OF
 THE SAME, STATING THEREIN THE REASONS FOR SUCH ACTION. A COPY OF
 SUCH ORDER WILL BE PROVIDED TO THE PETITIONER.
- 5.3. CONSIDERATIONS WHETHER TO RULE
 IN DETERMINING WHETHER TO RULE UPON A PETITION FILED PURSUANT TO
 THIS RULE, THE DIRECTOR OR THE COMMISSION MAY CONSIDER THE
 FOLLOWING MATTERS, AMONG OTHERS:
 - A. WHETHER A RULING ON THE PETITION WILL TERMINATE A CONTROVERSY OR REMOVE UNCERTAINTIES AS TO THE APPLICABILITY TO PETITIONER OF ANY STATUTORY PROVISION OR RULE OR ORDER OF THE DIRECTOR OR THE COMMISSION;
 - B. WHETHER THE PETITION INVOLVES ANY SUBJECT, QUESTION OR ISSUE WHICH IS THE SUBJECT OF A FORMAL OR INFORMAL MATTER OR APPLICATION CURRENTLY PENDING BEFORE THE DIRECTOR OR THE COMMISSION OR A COURT INVOLVING ONE OR MORE OF THE PETITIONERS WHICH WILL TERMINATE THE CONTROVERSY OR REMOVE THE UNCERTAINTIES AS TO THE APPLICABILITY TO THE PETITIONER OF ANY STATUTORY PROVISION OR OF ANY RULE OR ORDER OF THE DIRECTOR OR THE COMMISSION, WHICH MATTER OR APPLICATION WILL BE SPECIFIED BY THE DIRECTOR OR THE COMMISSION;
 - C. WHETHER THE PETITION INVOLVES ANY SUBJECT, QUESTION OR ISSUE WHICH IS THE SUBJECT OF A FORMAL OR INFORMAL MATTER OR APPLICATION CURRENTLY PENDING BEFORE THE DIRECTOR OR THE COMMISSION OR A COURT BUT NOT INVOLVING ANY PETITIONER WHICH WILL TERMINATE THE CONTROVERSY OR REMOVE THE UNCERTAINTIES AS TO THE APPLICABILITY TO THE PETITIONER OF ANY STATUTORY PROVISION OR OF ANY RULE OR ORDER OF THE DIRECTOR OR THE COMMISSION, WHICH MATTER OR APPLICATION WILL BE SPECIFIED BY THE DIRECTOR OR THE COMMISSION AND IN WHICH PETITIONER MAY INTERVENE;
 - D. WHETHER THE PETITION SEEKS A RULING ON A MOOT OR HYPOTHETICAL QUESTION AND WILL RESULT IN MERELY AN ADVISORY RULING OR OPINION;
 - E. WHETHER THE PETITIONER HAS SOME OTHER ADEQUATE LEGAL REMEDY, OTHER THAN AN ACTION FOR DECLARATORY RELIEF, WHICH WILL TERMINATE THE CONTROVERSY OR REMOVE ANY UNCERTAINTY AS TO THE APPLICABILITY TO THE PETITIONER OF THE STATUTE, RULE OR ORDER IN QUESTION.

- 5.4. PETITION CONTENTS
 ANY PETITION FILED PURSUANT TO THIS RULE MUST SET FORTH THE FOLLOWING:
 - A. THE NAME AND ADDRESS OF THE PETITIONER AND WHETHER THE PETITIONER IS CERTIFIED PURSUANT TO SECTION 12-61-720. C.R.S.
 - B. THE STATUTE, RULE OR ORDER TO WHICH THE PETITION RELATES.
 - C. A CONCISE STATEMENT OF ALL THE FACTS NECESSARY TO SHOW THE NATURE OF THE CONTROVERSY OR UNCERTAINTY AND THE MANNER IN WHICH THE STATUTE, RULE OR ORDER IN QUESTION APPLIES OR POTENTIALLY APPLIES TO THE PETITIONER.
 - D. A CONCISE STATEMENT OF THE LEGAL AUTHORITIES IF ANY, AND SUCH OTHER REASONS UPON WHICH THE PETITIONER RELIES.
 - E. A CONCISE STATEMENT OF THE DECLARATORY ORDER SOUGHT BY THE PETITIONER.
- 5.5. PROCEDURES TO RULE

 IF THE DIRECTOR OR THE COMMISSION DETERMINES TO RULE ON THE PETITION, THE FOLLOWING PROCEDURES WILL APPLY.
 - A. THE DIRECTOR OR THE COMMISSION MAY RULE UPON THE PETITION WITHOUT A HEARING. IN SUCH A CASE:
 - 1. THE DIRECTOR OR THE COMMISSION MAY DISPOSE OF THE PETITION ON THE SOLE BASIS OF THE MATTERS SET FORTH IN THE PETITION;
 - 2. THE PETITIONER MAY BE REQUESTED TO SUBMIT ADDITIONAL FACTS IN WRITING. IN SUCH EVENT, SUCH ADDITIONAL FACTS WILL BE CONSIDERED AS AN AMENDMENT TO THE PETITION;
 - 3. THE PETITIONER MAY BE REQUIRED TO FILE A WRITTEN BRIEF, MEMORANDUM OR STATEMENT OF POSITION BASED ON THE FACTS SET FORTH IN PETITION AND ANY AMENDMENT:
 - 4. ANY RULING WILL APPLY ONLY TO THE EXTENT OF THE FACTS PRESENTED IN THE PETITION AND ANY AMENDMENT TO THE PETITION;
 - 5. THE DIRECTOR OR THE COMMISSION MAY TAKE ADMINISTRATIVE NOTICE OF FACTS PURSUANT TO THE ADMINISTRATIVE PROCEDURE ACT (C.R.S. 1973, SECTION 24-4-105(8)) AND UTILIZE THEIR EXPERIENCE, TECHNICAL COMPETENCE AND SPECIALIZED KNOWLEDGE IN THE DISPOSITION OF THE PETITION;
 - 6. IF THE DIRECTOR OR COMMISSION RULES UPON THE PETITION WITHOUT A HEARING, A WRITTEN ORDER, STATING THEREIN THE BASIS FOR THE ORDER WILL ISSUED. A COPY OF SUCH ORDER WILL PROMPTLY BE TRANSMITTED TO THE PETITIONER.
 - B. THE DIRECTOR OR THE COMMISSION MAY, IN THEIR DISCRETION, SET THE PETITION FOR HEARING, UPON DUE NOTICE TO THE PETITIONER, FOR THE

PURPOSE OF OBTAINING ADDITIONAL FACTS OR INFORMATION OR TO DETERMINE THE TRUTH OF ANY FACT SET FORTH IN THE PETITION OR TO HEAR ORAL ARGUMENT ON THE PETITION. NOTICE TO THE PETITIONER SETTING SUCH HEARING WILL SET FORTH, TO THE EXTENT KNOWN, THE FACTUAL OR OTHER MATTERS INTO WHICH THE DIRECTOR OR THE COMMISSION INTENDS TO INQUIRE AND WHETHER THE HEARING WILL BE EVIDENTIARY OR NON-EVIDENTIARY IN NATURE. FOR THE PURPOSE OF SUCH A HEARING, TO THE EXTENT NECESSARY, THE PETITIONER WILL HAVE THE BURDEN OF PROVING ALL OF THE FACTS STATED IN THE PETITION, ALL OF THE FACTS NECESSARY TO SHOW THE NATURE OF THE CONTROVERSY OR UNCERTAINTY AND THE MANNER IN WHICH THE STATUTE, RULE OR ORDER IN QUESTION APPLIES OR POTENTIALLY APPLIES TO PETITIONER AND ANY OTHER FACTS THE PETITIONER DESIRES THE DIRECTOR OR THE COMMISSION TO CONSIDER.

- 5.6. PARTIES TO PROCEEDINGS
 - THE PARTIES TO ANY PROCEEDING PURSUANT TO THIS RULE WILL BE THE DIRECTOR OR THE COMMISSION AND THE PETITIONER. ANY OTHER PERSON MAY SEEK LEAVE OF THE DIRECTOR OR THE COMMISSION TO INTERVENE IN SUCH A PROCEEDING, AND LEAVE TO INTERVENE WILL BE GRANTED AT THE SOLE DISCRETION OF THE DIRECTOR OR COMMISSION. A PETITION TO INTERVENE MUST SET FORTH THE SAME MATTERS AS REQUIRED BY RULE 5.4.
- 5.7. ORDERS SUBJECT TO JUDICIAL REVIEW
 ANY DECLARATORY ORDER OR OTHER ORDER DISPOSING OF A PETITION
 PURSUANT TO THIS RULE WILL CONSTITUTE AGENCY ACTION SUBJECT TO
 JUDICIAL REVIEW PURSUANT TO SECTION 24-4-106, C.R.S. AS AMENDED.

A hearing on the above subject matter will be held on Monday, November 3, 2014, at the Colorado Division of Real Estate, 1560 Broadway, Suite 1250-C, Denver, Colorado 80202 beginning at 9:00 a.m.

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered.

NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING November 3, 2014

RULE CHAPTER 6. EXCEPTIONS AND REVIEW OF INITIAL DECISIONS BY THE DIRECTOR OR THE COMMISSION

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Colorado Department of Regulatory Agencies and the Division of Real Estate to promulgate rules, or to amend, repeal or repeal and re-enact the present rules related to conservation easements.

STATEMENT OF BASIS

The statutory basis for the rules titled <u>Conservation Easements</u> is Chapter 7 of Title 12, Article 61, Colorado Revised Statutes, as amended.

STATEMENT OF PURPOSE

The purpose of this rule is to effectuate the legislative directive to promulgate necessary and appropriate rules pursuant to sections 12-61-720 and 12-61-723(12)(d), C.R.S.

SPECIFIC PURPOSE OF THIS RULEMAKING

The specific purpose of this rule is to define the requirements and procedures regarding exceptions and the review of initial decisions by the Director or the Commission.

Proposed New, Amended and Repealed Rules

[Deleted material showed struck through, new material shown ALL CAPS. Rules, or portions of rules, which are unaffected are reproduced. Readers are advised to obtain a copy of the complete rules of the Division at http://www.sos.state.co.us]

CHAPTER 6: EXCEPTIONS AND REVIEW OF INITIAL DECISIONS BY THE DIRECTOR OR THE COMMISSION

- 6.1. WRITTEN FORM, SERVICE AND FILING REQUIREMENTS
 - A. ALL DESIGNATIONS OF RECORD, REQUESTS, EXCEPTIONS AND RESPONSIVE PLEADINGS ("PLEADINGS") MUST BE IN WRITTEN FORM, MAILED WITH A CERTIFICATE OF MAILING OR HAND-DELIVERED TO THE DIRECTOR OR THE COMMISSION.

- B. ALL PLEADINGS MUST BE RECEIVED BY THE DIRECTOR OR THE COMMISSION BY 5:00 P.M. ON THE DATE THE FILING IS DUE. A PLEADING IS CONSIDERED FILED UPON <u>RECEIPT</u> BY THE DIRECTOR OR THE COMMISSION. THESE RULES DO NOT PROVIDE FOR ANY ADDITIONAL TIME FOR SERVICE BY MAIL.
- C. ANY PLEADINGS MUST BE SERVED ON THE OPPOSING PARTY BY MAIL OR BY HAND DELIVERY ON THE DATE WHICH THE PLEADINGS ARE FILED WITH THE DIRECTOR OR THE COMMISSION.
- D. ALL PLEADINGS MUST BE FILED <u>WITH THE DIRECTOR OR THE COMMISSION</u>
 AND NOT WITH THE OFFICE OF ADMINISTRATIVE COURTS. ANY
 DESIGNATIONS OF RECORD, REQUESTS, EXCEPTIONS OR RESPONSIVE
 PLEADINGS FILED IN ERROR WITH THE OFFICE OF ADMINISTRATIVE COURTS
 WILL <u>NOT</u> BE CONSIDERED. THE DIRECTOR'S AND THE COMMISSION'S
 ADDRESS IS:

DIVISION OF REAL ESTATE 1560 BROADWAY, SUITE 925 DENVER, COLORADO 80202

6.2. AUTHORITY TO REVIEW

- A. THE DIRECTOR HEREBY PRESERVES THE DIRECTOR'S OPTION TO INITIATE A REVIEW OF AN INITIAL DECISION ON HIS/HER OWN MOTION PURSUANT TO SECTION 24-4-105(14)(A)(II) AND (B)(III), C.R.S. OUTSIDE OF THE (30) THIRTY DAY PERIOD AFTER SERVICE OF THE INITIAL DECISION UPON THE PARTIES.
- B. THE COMMISSION HEREBY PRESERVES THE COMMISSION'S OPTION TO INITIATE A REVIEW OF AN INITIAL DECISION ON ITS OWN MOTION PURSUANT TO SECTION 24-4-105(14)(A)(II) AND (B)(III), C.R.S. OUTSIDE OF THE (30) THIRTY DAY PERIOD AFTER SERVICE OF THE INITIAL DECISION UPON THE PARTIES WITHOUT REQUIRING A VOTE OF EACH CASE.
- C. THIS OPTION TO REVIEW WILL APPLY REGARDLESS OF WHETHER A PARTY FILES EXCEPTIONS TO THE INITIAL DECISION.

6.3. DESIGNATION OF RECORD AND TRANSCRIPTS

- A. ANY PARTY SEEKING TO REVERSE OR MODIFY THE INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE MUST FILE WITH THE DIRECTOR OR THE COMMISSION A DESIGNATION OF THE RELEVANT PARTS OF THE RECORD FOR REVIEW ("DESIGNATION OF RECORD"). DESIGNATIONS OF RECORD MUST BE FILED WITH THE DIRECTOR OR THE COMMISSION WITHIN (20) TWENTY DAYS OF THE DATE ON WHICH THE DIRECTOR OR THE COMMISSION MAILS THE INITIAL DECISION TO THE PARTIES' ADDRESS OF RECORD WITH THE DIRECTOR OR THE COMMISSION.
- B. WITHIN (10) <u>TEN DAYS</u> AFTER A PARTY'S DESIGNATION OF RECORD IS DUE, ANY OTHER PARTY MAY FILE A SUPPLEMENTAL DESIGNATION OF RECORD REQUESTING INCLUSION OF ADDITIONAL PARTS OF THE RECORD.

- C. EVEN IF NO PARTY FILES A DESIGNATION OF RECORD, THE RECORD MUST INCLUDE THE FOLLOWING:
 - 1. ALL PLEADINGS;
 - 2. ALL APPLICATIONS PRESENTED OR CONSIDERED DURING THE HEARING:
 - ALL DOCUMENTARY OR OTHER EXHIBITS ADMITTED INTO EVIDENCE;
 - 4. ALL DOCUMENTARY OR OTHER EXHIBITS PRESENTED OR CONSIDERED DURING THE HEARING:
 - 5. ALL MATTERS OFFICIALLY NOTICED;
 - ANY FINDINGS OF FACT AND CONCLUSIONS OF LAW PROPOSED BY ANY PARTY; AND
 - 7. ANY WRITTEN BRIEF FILED.
- D. TRANSCRIPTS: TRANSCRIPTS WILL NOT BE DEEMED PART OF A DESIGNATION OF RECORD UNLESS SPECIFICALLY IDENTIFIED AND ORDERED. SHOULD A PARTY WISH TO DESIGNATE A TRANSCRIPT OR PORTION THEREOF, THE FOLLOWING PROCEDURES WILL APPLY:
 - THE DESIGNATION OF THE RECORD MUST IDENTIFY WITH SPECIFICITY THE TRANSCRIPT OR PORTION THEREOF TO BE TRANSCRIBED. FOR EXAMPLE, A PARTY MAY DESIGNATE THE ENTIRE TRANSCRIPT, OR MAY IDENTIFY WITNESS(ES) WHOSE TESTIMONY IS TO BE TRANSCRIBED, THE LEGAL RULING OR ARGUMENT TO BE TRANSCRIBED, OR OTHER INFORMATION NECESSARY TO IDENTIFY A PORTION OF THE TRANSCRIPT.
 - 2. ANY PARTY WHO INCLUDES A TRANSCRIPT OR A PORTION THEREOF AS PART OF THE DESIGNATION OF RECORD MUST <u>ORDER</u> THE TRANSCRIPT OR RELEVANT PORTIONS BY THE DATE ON WHICH THE DESIGNATION OF RECORD MUST BE FILED (WITHIN (20) TWENTY DAYS OF THE DATE ON WHICH THE DIRECTOR OR THE COMMISSION MAILS THE INITIAL DECISION TO THE PARTIES).
 - 3. WHEN ORDERING THE TRANSCRIPT, THE PARTY MUST REQUEST A COURT REPORTER OR TRANSCRIBING SERVICE TO PREPARE THE TRANSCRIPT WITHIN (30) THIRTY DAYS. THE PARTY MUST TIMELY PAY THE NECESSARY FEES TO OBTAIN AND FILE WITH THE DIRECTOR OR THE COMMISSION AN ORIGINAL TRANSCRIPTION AND ONE COPY WITHIN (30) THIRTY DAYS.
 - 4. THE PARTY ORDERING THE TRANSCRIPT MUST DIRECT THE COURT REPORT OR TRANSCRIBING SERVICE TO COMPLETE AND FILE WITH THE DIRECTOR OR THE COMMISSION THE TRANSCRIPT AND ONE COPY OF THE TRANSCRIPT WITHIN (30) THIRTY DAYS.

- 5. IF A PARTY DESIGNATES A PORTION OF THE TRANSCRIPT, THE OPPOSING PARTY MAY ALSO FILE A SUPPLEMENTAL DESIGNATION OF RECORD, IN WHICH THE OPPOSING PARTY MAY DESIGNATE ADDITIONAL PORTIONS OF THE TRANSCRIPT.
- 6. AN OPPOSING PARTY FILING A SUPPLEMENTAL DESIGNATION OF RECORD DESIGNATING ADDITIONAL PORTIONS OF THE TRANSCRIPT MUST ORDER AND PAY FOR SUCH TRANSCRIPTS OR PORTIONS THEREOF WITHIN THE DEADLINES SET FORTH ABOVE. AN OPPOSING PARTY MUST ALSO CAUSE THE COURT REPORTER TO COMPLETE AND FILE WITH THE DIRECTOR OR THE COMMISSION THE TRANSCRIPT AND ONE COPY OF THE TRANSCRIPT WITHIN (30) THIRTY DAYS.
- 7. TRANSCRIPTS THAT ARE ORDERED AND NOT FILED WITH THE DIRECTOR OR THE COMMISSION IN A TIMELY MANNER BY THE REPORTER OR THE TRANSCRIPTION SERVICE DUE TO NON-PAYMENT, INSUFFICIENT PAYMENT OR FAILURE TO DIRECT AS SET FORTH ABOVE WILL NOT BE CONSIDERED BY THE DIRECTOR OR THE COMMISSION.
- 6.4. FILING OF EXCEPTIONS AND RESPONSIVE PLEADINGS.
 - A. ANY PARTY WISHING TO FILE EXCEPTIONS MUST ADHERE TO THE FOLLOWING TIMELINES:
 - IF NO TRANSCRIPTS ARE ORDERED, EXCEPTIONS ARE DUE WITHIN (30) THIRTY DAYS FROM THE DATE ON WHICH THE DIRECTOR OR THE COMMISSION MAILS THE INITIAL DECISION TO THE PARTIES. BOTH PARTIES' EXCEPTIONS ARE DUE ON THE SAME DATE.
 - 2. IF TRANSCRIPTS ARE ORDERED BY EITHER PARTY, THE FOLLOWING PROCEDURE WILL APPLY. UPON RECEIPT OF ALL TRANSCRIPTS IDENTIFIED IN ALL DESIGNATIONS OF RECORD AND SUPPLEMENTAL DESIGNATIONS OF RECORD, THE DIRECTOR OR THE COMMISSION WILL MAIL NOTIFICATION TO THE PARTIES STATING THAT THE TRANSCRIPTS HAVE BEEN RECEIVED BY THE DIRECTOR OR THE COMMISSION. EXCEPTIONS ARE DUE WITHIN (30) THIRTY DAYS FROM THE DATE ON WHICH SUCH NOTIFICATION IS MAILED. BOTH PARTIES' EXCEPTIONS ARE DUE ON THE SAME DATE.
 - B. EITHER PARTY MAY FILE A RESPONSIVE PLEADING TO THE OTHER PARTY'S EXCEPTIONS. ALL RESPONSIVE PLEADINGS MUST BE FILED WITHIN (10) TEN DAYS OF THE DATE ON WHICH THE EXCEPTIONS WERE FILED WITH THE DIRECTOR OR THE COMMISSION. NO OTHER PLEADINGS WILL BE CONSIDERED EXCEPT FOR GOOD CAUSE SHOWN.
 - C. IT IS WITHIN THE SOLE DISCRETION OF THE DIRECTOR OR THE COMMISSION TO GRANT AN EXTENSION OF TIME TO FILE EXCEPTIONS OR RESPONSIVE PLEADINGS. THE DIRECTOR OR THE COMMISSION MAY DELEGATE THE DISCRETION TO GRANT SUCH AN EXTENSION OF TIME TO THEIR DESIGNEE.

6.5. REQUEST FOR ORAL ARGUMENT.

- A. ALL REQUESTS FOR ORAL ARGUMENT MUST BE IN WRITING AND FILED BY THE DEADLINE FOR RESPONSIVE PLEADINGS.
- B. IT IS WITHIN THE SOLE DISCRETION OF THE DIRECTOR OR THE COMMISSION TO GRANT OR DENY A REQUEST FOR ORAL ARGUMENT. IF ORAL ARGUMENT IS GRANTED, BOTH PARTIES WILL HAVE THE OPPORTUNITY TO PARTICIPATE.
- C. IF A REQUEST FOR ORAL ARGUMENT IS GRANTED, EACH SIDE WILL BE PERMITTED (10) TEN MINUTES OF ORAL ARGUMENT UNLESS SUCH TIME IS EXTENDED BY THE DIRECTOR OR THE COMMISSION OR THEIR DESIGNEE.

A hearing on the above subject matter will be held on Monday, November 3, 2014, at the Colorado Division of Real Estate, 1560 Broadway, Suite 1250-C, Denver, Colorado 80202 beginning at 9:00 a.m.

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered.